



MONTANA SENATOR

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As you know, last year the Senate debated a bill negotiated by Senator Hatch and Majority Leader Frist to create an asbestos trust fund that would permit compensation for those suffering from asbestos exposure. The 109th Congress has just begun this month, and the new Senate Judiciary Committee Chairman Arlen Specter has circulated a draft bill and held a hearing earlier this week about the topic. It is important to note that this legislation is still in draft form, and has not yet been introduced.

To assure that the needs of Libby's residents are met, I would like to hear your comments about this proposal. I encourage you to contact me so that I may bring your experience to the attention of the Senate Judiciary Committee and Chairman Specter as the legislation is updated. **Please feel free to contact me at (800) 344-1513 or Denise Smith on my staff at denise_smith@burns.senate.gov.**

While the legislation is still being drafted, I remain concerned with several key areas in the bill:

- No agreement has been reached on the size of the Asbestos Injury Claims Resolution Fund.
- The duration of the Fund has not been determined—since there are no assurances that the Fund would be available for those who may develop asbestos-related diseases decades in the future, I have doubts about the effectiveness of the Fund for Libby's residents.
- The highly-technical medical diagnosis may exclude some of Libby's residents in the lower diagnosis tiers. For example, it is not certain whether those who only are affected in one lung would be able to seek compensation because the diagnosis standard defines the problem as a bilateral lung condition.
- The treatment of pending legal claims and their future, should the Fund become insolvent within its early stages, is also still being worked out. This creates an uncertain future for claimants who have tried to seek a remedy through the court system.

However, I am happy to see that, similar to last year, this bill does exempt residents of Libby from strict exposure requirements that other claimants must demonstrate. This exemption exists for those who worked at the vermiculite mine or its facility, or those who live within a 20-mile radius of Libby for at least 12 consecutive months prior to December 31, 2003. Also, should the residents of Libby decide to pursue their own settlement, their ability to participate in the Fund would not be compromised.

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The highlights illustrated here can in no way capture the entire 273-page bill, and this information will continue to change as the bill progresses through the legislative process. Some of the highlights in the bill include:

- The bill would create an Office of Asbestos Disease Compensation within the U.S. Department of Labor, whose Administrator would be in charge of the Asbestos Injury Claims Resolution Fund. As of today, no total dollar amount for the Fund has been agreed to, but the defendant companies, insurers, and existing trusts would all contribute to the Fund.
- Compensation for victims varies among the ten tiers, beginning with medical monitoring for those diagnosed as Level I, up to Level X compensation of \$1.075 million.
- For those of you that have pending legal claims, if this bill is enacted, a stay will be ordered and the court will not proceed with your claim, which would then be filed with the trust fund.
- To submit a claim to the Fund, people may choose to do so with or without the assistance of an attorney. A list of attorneys who will provide free services to claimants will be kept by the Administrator, and any claimant may choose one of these attorneys. For those who choose to pay an attorney to file their claim, the amount an attorney may receive from an award is capped. There is a general 10% cap on attorneys' fees, which may go as high as 20% of the final award if the determination is appealed.
- Once a claim has been filed, it will be reviewed by a panel of three physicians. These doctors must have experience with asbestos-related diseases. Among the qualifications for the physicians to serve on the panel, they must not have received more than 15% of their income acting on behalf of any party in asbestos litigation for each of the past five years. For those claimants suffering from very serious affects of asbestos exposure, the processing of their claims will be expedited and deemed an "exigent health claim." Consideration will also be given for those who claim extreme financial hardship.
- Claim awards are divided among ten different tiers, and a decision must be rendered within 90 days of filing the claim. These decisions may be appealed. The most serious claim, Level X, includes those who are diagnosed with mesothelioma. It is expected that most claims will fall under Level VII, which includes a diagnosis of lung cancer with asbestos exposure as a contributing factor.

Again, I want to hear from the residents of Libby regarding this legislation so I can work hard to make sure your needs are met. If you would like to receive future updates on this issue as they occur, please contact Denise Smith in my Kalispell office at (406) 257-3360 and provide your name and email and/or phone number. She will be coordinating the local impact with Jodi Peters in my Washington, DC office. I would be happy to provide anyone interested with copies of the full bill text, and will answer any additional questions that you may have.

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